

Effective December 15, 2011, City Council has authorized that Chapter 13.84 of the Berkeley Municipal Code be rescinded and reenacted to read as follows:

Chapter 13.84

RELOCATION SERVICES AND PAYMENTS FOR RESIDENTIAL TENANT HOUSEHOLDS

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Section 13.84.010 Purpose.

The purpose of this Chapter is to provide Relocation services and require property Owners to make certain payments to residential Tenant Households temporarily Relocated as a result of Code Enforcement Activities or Voluntary Code Compliance in order to alleviate hardships associated with such Relocations; to facilitate the correction of code violations; and to protect the health, safety and welfare of Berkeley residents.

Section 13.84.020 Definitions

A. "Code Enforcement" or "Code Enforcement Activity" means an activity or activities initiated by the City to require an Owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshall after a fire ordering Relocation.

B. "Household" or "Tenant Household" for purposes of this Chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

C. "Natural Disaster" means any event or force of nature that is not caused by human action or inaction which results in death, injuries and/or damage to property, such as an earthquake, flood, or forest fire.

D. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or his or her agent or assignee.

E. "Relocate" or "Relocation" means the required vacating of a Residential Unit or Room by a Tenant Household and the moving temporarily into another Unit or Room as a result of repairs required to bring the building or a portion thereof which contains a Residential Unit or Room occupied by the Tenant Household into code compliance whether such repairs are undertaken because of Code Enforcement or through Voluntary Code Compliance as defined below.

F. "Residential unit" or "Unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a Household.

G. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a Tenant Household for at least thirty (30) consecutive days.

H. "Voluntary Code Compliance" means actions voluntarily initiated by an Owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the Inventory of Potentially Hazardous Soft Story Buildings established under Chapter 19.39 so as to remove it from such inventory under Section 19.39.080.B if such retrofit is required by the City.

Section 13.84.025 Notice

Whenever any notice or other communication is required by this Chapter to be served on, provided, given or delivered to, or filed with, any person, that notice or communication may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication.

Section 13.84.030 Eligibility for Relocation services and assistance

A. A Tenant Household shall be eligible for Relocation assistance and payments pursuant to this Chapter if the City determines that the condition of a building or portion thereof is such that a Unit or Room cannot be safely occupied by that Tenant Household while the building or portion thereof is being brought into code compliance and if such condition was not primarily or entirely created by the Tenant Household occupying the Unit or Room.

B. A Tenant Household shall not be eligible for Relocation assistance and payments pursuant to this Chapter if the required Relocation of the Tenant Household is the result of an earthquake or other Natural Disaster.

Section 13.84.040 Owner responsibilities

A. The Owner shall be responsible for providing Relocation payments directly to the Tenant Household required to Relocate pursuant to this Chapter. The Owner is also responsible for complying with the Berkeley Municipal Code Section 13.76.130 (Rent Stabilization and Eviction for Good Cause Ordinance).

B. If the Owner or the City determines that Relocation is necessary, the Owner shall provide a written Notice of Temporary Relocation to any affected Tenant Households 30 days in advance of the required Relocation unless the City orders abatement that requires Relocation in less than 30 days and, in such case, the Owner shall provide a Notice within 10 days of the City's abatement order. Such notice shall summarize the repairs to be undertaken and the estimated duration of Relocation. Any such notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

C. The Owner shall notify the Tenant Household when repairs are completed and permit the Tenant Household to reoccupy the Residential Unit or Room as per Section 13.84.090. The Tenant Household shall retain all rights of tenancy that existed prior to Relocation, except as set forth in Section 13.84.070.G.2.

Section 13.84.050 Relocation payment and appeals procedures for Code Enforcement Activity

A. Whenever a building or portion thereof which contains a Residential Unit or Room is declared in violation of any law, the Building Official or Fire Marshal, as appropriate, shall determine whether the repairs necessary to abate the violation(s) can reasonably be accomplished without Relocation of the Tenant Household in possession of the Unit or Room. Such determination shall be served in the same manner as the Notice of Violation. The absence of an express determination that Relocation is required shall be deemed a determination that Relocation is not required.

B. Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal under subsection A of this section, may file a written request for a hearing by the Housing Advisory Commission. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall.

C. Appeals of determinations by the Building Official or Fire Marshall of the necessity to Relocate due to an imminent threat to life and safety shall not delay enforcement of the vacation ordered by the Building Official or Fire Marshall.

D. The determination by the Building Official or Fire Marshal that a Tenant Household is required to Relocate pursuant to this Chapter shall not relieve the Owner of his/her obligation to provide a Notice of Temporary Relocation pursuant to Section 13.84.040. Any such Notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter, and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their

obligation to serve any notice that would otherwise be required pursuant to state or local law.

E. Each Tenant Household which has been served with a Notice of Temporary Relocation from the Owner indicating that Relocation is required in accordance with the Notice of Violation shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall serve the completed Request for Relocation Payment to the Owner within 30 days after receipt of the Notice of Temporary Relocation.

F. Within five (5) business days after receipt of the Tenant Household's completed Request for Relocation Payment form, the Owner shall make the initial Relocation payment directly to the Tenant Household as per Section 13.84.070, or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

Section 13.84.060 Relocation payment procedures for Voluntary Code Compliance

A. Whenever an Owner applies for a building permit to bring a Residential Unit or Room into code compliance, the Owner shall be required to specify whether repairs will necessitate the Tenant Household occupying the Unit or Room to Relocate.

B. The City shall provide the Owner with a notice containing information about the Tenant Household's Relocation rights pursuant to this Chapter, as well as a copy of this Chapter and a City contact number where additional information can be obtained.

C. If the Owner determines that Relocation may be necessary to undertake repairs to bring the property into code compliance or as a result of fumigation, the Owner shall serve all affected Tenant Households with a Notice of Temporary Relocation, a copy of this Chapter, and a copy of the City's Request for Relocation Payment form. These documents shall be provided to Tenants at least thirty (30) days in advance of the required Relocation. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. If the Tenant Household disagrees with the Owner's determination of the necessity to Relocate, the Tenant Household may follow the conflict resolution and appeals procedure as specified in Section 13.84.100.

E. The Building Official must receive acknowledgment(s) of receipt by the Tenant Household(s) of the documents required by subsection C of this Section before the City will issue the building permits necessary to undertake repairs. Such acknowledgment may be in the form of the Tenant Household's signature asserting receipt, or other proof substantiating that a Notice was delivered to the affected Tenant Household(s).

F. Each Tenant Household which has been served with the Notice required by subdivision C or the Building Official's determination pursuant to Section 13.84.100.A.3 shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall notify the Owner of the amount of payment to which the Tenant Household is entitled within 30 days of receipt of the Notice from the Owner.

G. Within ten (10) days after receipt of the Tenant Household's completed Relocation Payment form, the Owner shall make the initial Relocation payment directly to the Tenant Household as per Section 13.84.070.C.5 or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

H. The Relocation of a Tenant Household pursuant to this Chapter shall not terminate the tenancy of the Relocated Household. The Relocated Household shall have the right to reoccupy the Unit or Room from which it was relocated as soon as the Unit or Room is ready for re-occupancy, except as set forth in Section 13.84.070.G.2.

Section 13.84.070 Relocation and other payments

A. Households to be relocated for twenty-nine (29) consecutive days or less shall be entitled to the following Relocation payments:

1. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council Resolution and be based upon Tenant Household size.

2. Reimbursement for daily boarding costs for pets lawfully occupying the Unit or Room from which the Tenant Household was Relocated at the date of Relocation if the Tenant Household's temporary accommodation does not accept pets. The Tenant Household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council Resolution. The Tenant Household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the Owner. For purposes of this Section "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a Unit or Room shall be the number specifically permitted by written agreement.

3. The initial Relocation payment shall be due within ten days of the Owner's receipt of the Tenant Household's Request for Relocation Payment. If the period of Relocation is less than 10 days, the initial Relocation payment shall include the per diem payment for the full period. If the period of Relocation exceeds 10 days, the initial Relocation payment shall include either:

a. A lump sum per diem payment for the full period of Relocation, or

b. The per diem payment for a minimum of 10 days, with subsequent payment contingent upon verification of hotel costs incurred by the Tenant Household. Such payments are due to the Tenant Household immediately upon Owner's receipt of documentation verifying the Household's expenses. If the Tenant Household does not incur hotel costs, it is only entitled to receive a meal allowance for each member of the Household during the remaining period of Relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to Relocation payments that include all of the following:

1. A one-time dislocation allowance to help defray incidental Relocation expenses. The amount of the dislocation allowance shall be established by City Council Resolution.

2. The Household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:

a. If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council Resolution.

b. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original Unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis.

3. If the rental costs incurred by the Tenant Household during the period of Relocation exceed the amount of rent being paid on the Unit or Room to be vacated, the Household shall be eligible for a rent differential payment. The rent differential payment shall be equal to the difference between the rent paid on the Unit or Room to be vacated and the rent paid for a Unit or Room temporarily leased during the period of Relocation, with the following restrictions:

a. The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the Rent Stabilization Program for the prior calendar year.

b. The ceiling for the rent differential payment shall be based on the bedroom size of the Unit or Room to be vacated, with the exception of payments for Relocation from Rooms which shall be calculated on the same basis as payment for Relocation from a studio apartment.

c. The rent differential payment for a Tenant Household receiving a rental subsidy shall be based on the amount of rent paid by the Tenant Household for the Unit or Room leased by the Tenant Household during the period of Relocation. The Owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of Relocation.

4. Reimbursement for the documented utility cost(s) that the Tenant Household incurs in their replacement housing, if the Owner had been paying that particular utility cost for the vacated Unit or Room.

C. The initial Relocation payment pursuant to Subsection 13.84.070.B shall be due within ten days of the Owner's receipt of the Tenant Household's Request for Relocation Payment, and shall include:

1. The dislocation allowance;

2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month, or, if the Relocation is anticipated to exceed ninety days, then the initial payment shall include the rent differential payment for the first three month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subdivisions B.2.b through B.4, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least 7 (seven) days in advance of when

the Tenant Household's monthly rental payment is due. Instead of monthly payments the Owner may make one lump sum payment for the full amount due for the rent differential payments to the Tenant Household. If the Tenant Household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the Owner of documentation that verifies the Household's expenses.

E. Payments pursuant to subdivisions B.2.b through B.4, when applicable, shall continue until such time that the Unit from which the Tenant Household was relocated is available for occupancy or the Tenant Household has notified the Owner of their intent to permanently vacate the Unit.

F. If the Tenant Household has not been offered the opportunity to reoccupy the Unit from which it relocated within six (6) months from the date of their Relocation, the Tenant Household shall be entitled to receive an additional dislocation-allowance payment. The Tenant Household must provide written request for the additional dislocation payment to the Owner which includes confirmation of their intent to reoccupy the Unit. Such payment is due within ten (10) days after receipt of the Tenant Household's request. Acceptance of such payment does not constitute a Tenant Household's relinquishment of any tenancy rights.

G. 1. In lieu of the per diem payments in subdivision A of this Section, or rent differential and utility payments in subsections B.3 and B.4 of this Section, the Owner may offer an alternate rental Unit or Room to the Tenant Household that is comparable to the Unit or Room being vacated and is owned by the Owner. The amount of rent paid by the Household for such Unit or Room shall not exceed the rent being paid on the Unit or Room from which the Tenant Household Relocated. If the Tenant Household accepts the Owner's offer, the Tenant Household does not relinquish its right to reoccupy the Unit or Room from which it is being Relocated unless the Tenant Household provides written notice surrendering possession of the Unit or Room. A Tenant Household that accepts an alternate Unit or Room is entitled to receive the dislocation allowance in subdivision B.1 of this Section, and compensation for moving and storage costs if applicable as provided in subdivision B.2 of this Section.

2. If the Tenant Household does not timely notify the Owner of its intent to reoccupy the Unit or Room under Section 13.84.090 and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the Unit or Room from which it has relocated and terminates its tenancy of that Unit or Room, and the rent for the alternate Unit or Room shall not be limited by this Chapter and may be increased to an amount otherwise permissible by Chapter 13.76. Nothing in this Section limits the Owner's right to evict a Tenant Household pursuant to Section 13.76.130.A.11.

H. A Tenant Household that is Relocated for thirty (30) days or more shall not be responsible for any rent due on the Unit or Room from which it was Relocated during the period of Relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

I. The Owner and Tenant Household may mutually agree upon temporary housing and Relocation payments other than that provided by this Chapter. Such agreement shall be in writing and signed by both the Owner and Tenant Household with a copy provided to the City's Housing and Community Services Department.

J. If a Tenant Household's actual Relocation period is shorter than the period for which the Owner has paid, the Tenant Household must repay the overpaid amount to the Owner within thirty (30) days of receiving written notice from the Owner of the overpayment. If the Tenant Household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their Relocation, these costs may be deducted from the amount to be repaid to the Owner, subject to the provisions of subdivision B of this Section.

K. All payments to Tenant Households under this Chapter shall be made to those persons in the Tenant Household from whom the Owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The Owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the Tenant Household. Nothing in this Section shall be construed to affect the determination of the actual number of Tenants in the Tenant Household for purposes of Chapter 13.76.

L. The size of a Tenant Household shall be determined based on the number of individuals entitled to occupy the Unit or Room at the time a determination of the building official is served under Section 13.84.050 or a Notice of Temporary Relocation is served under Section 13.84.060.C.

M. Upon receipt of the full relocation payment under this Chapter and a Notice of Temporary Relocation, the tenant household shall relocate within 30 calendar days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.A.7a.

N. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution:

1. Per diem rates for hotel accommodations and meal allowance pursuant to subdivisions A.1 and A.3 of this Section;
2. Maximum boarding costs for pets pursuant to subdivision A.2 of this Section;
3. Dislocation allowance pursuant to subdivision B.1 and F of this Section;
4. Fixed payments for moving and storage pursuant to subdivision B.2 of this Section.

Section 13.84.080 City's involvement in Relocation payments

A. The City may provide payment required by Section 13.84.070 to Tenant Households in situations where the Owner fails or refuses to pay for required Relocation costs. The City shall recover from the Owner all costs incurred as a result of making such payments. In order for the City to consider such payments, a request must be made by the Tenant Household to the City Manager or his or her designee within twenty (20) days from the Owner's failure or refusal to make the required payments as required in Sections 13.84.050.F and 13.84.060.G.

1. Upon receipt of a request from a Tenant Household the City shall mail a written notice to the Owner of the Owner's obligation under this Chapter to provide Relocation assistance and payment and the time when payment is required. The notice shall also specify that failure to make required payments may result in the City making such

payments and recovering the costs of doing so from the Owner through a special assessment lien on the Owner's property that shall include an administrative lien fee.

2. If within ten (10) days of the receipt of the notice provided pursuant to subdivision A.1 of this Section, the Owner continues to fail or refuse to make the necessary payments, the City may make the required Relocation payment to the Household. The City shall then bill the Owner for the amount of payment, plus any administrative and other costs it would not have otherwise incurred. If the Owner does not pay the City within a thirty (30) day period, the City may recover the costs as a special assessment lien on the Owner's property along with an administrative lien fee in accordance with Berkeley Municipal Code Chapter 1.24. The City Manager or his or her designee shall notify the Owner.

Section 13.84.090 Move-back option

A. The Relocation of a Tenant Household pursuant to this Chapter shall not terminate the tenancy of the Relocated Household. The Relocated Household shall have the right to reoccupy the Unit or Room from which it was relocated as soon as the Unit or Room is ready for reoccupancy, and the Tenant Household shall retain all rights of tenancy that existed prior to the displacement.

B. If a Household wishes to avail itself of this option, it must inform the Owner of its current address during the period of Relocation.

C. For Tenant Households displaced for thirty consecutive days or more, Owners shall notify the Tenant Household at least thirty (30) days in advance of the availability of the Unit or Room. Within ten (10) days of receipt of the notice of availability, a Tenant Household must notify the Owner if it wishes to reoccupy the Unit or Room. The Owner must hold the Unit or Room vacant at no cost to the Tenant Household for thirty (30) days from the date of the Tenant Household's written notice of its intent to reoccupy the Unit or Room is received.

D. For Households displaced for twenty-nine consecutive days or less and receiving a per diem payment, Owners shall notify the Household at least one day in advance of the availability of the Unit or Room. The Household shall be entitled to receive a per diem payment for up to twenty-four hours after receiving such notice that the Unit or Room is ready for occupancy. Within ten (10) days of receipt of the notice of availability from the Owner, the Household must notify the Owner of its intent to reoccupy the Unit or Room.

E. A Unit or Room shall be deemed to be permanently surrendered and the tenancy terminated, when the Tenant Household provides notice in writing to the Owner that it does not intend to reoccupy the Unit or Room from which it was relocated or does not notify the Owner of its intent to reoccupy the Unit or Room. If the Owner has not made Relocation payments as required by this Chapter and the Unit or Room becomes permanently vacated, then it shall be presumed that the surrender of the right of possession of the Unit or Room was involuntary unless the Owner has received a written notice from the Tenant Household permanently surrendering its right to their Unit or Room.

Section 13.84.100 Conflict Resolution and Appeal Procedures for Voluntary Code Compliance

A. Appeals under this Chapter related to Voluntary Code Compliance shall be filed as set forth below. Appeal procedures related to Code Enforcement Activity are addressed in Section 13.84.050.

1. If the Tenant Household disputes the Owner's determination of the necessity for Relocation, or either party disputes the amount of Relocation payments or other terms of the Relocation, the City may refer the parties to a conflict resolution or mediation service provided through the Rent Stabilization Board or any other appropriate entity upon request by both parties for such referral in lieu of an appeal to the Building Official per subsection A.3 of this Section. The purpose of such referral shall be the negotiation of a mutually acceptable agreement pertaining to the terms of the Relocation. If no agreement is reached, then either party may follow the appeals procedure as set forth in this Section. Nothing in this Chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their disagreements.

2. If the Owner disagrees with the Tenant Household's claim for Relocation payments, and such disagreement cannot be resolved through conflict resolution or mediation, then the Owner may file a written request for a hearing by the Housing Advisory Commission as to the amount of the claim, or his or her responsibility for Relocation assistance pursuant to this Chapter. Such request must be filed within five (5) business days of the conclusion of mediation or within ten (10) days of the Owner's receipt of the Tenant Household's claim of Relocation payments as set forth in Sections 13.84.050.E or 13.84.060.F, whichever comes later.

3. If the Tenant Household disagrees with the Owner as to the necessity to Relocate, and such disagreement cannot be resolved through conflict resolution or mediation, the Tenant Household may request in writing that the Building Official make a determination. Such request must be filed within five (5) business days of the conclusion of mediation, or within ten (10) days of the Tenant Household's receipt of the Relocation notice in Section 13.84.060.C, whichever comes later. The Building Official shall determine whether Relocation is necessary and the Owner shall serve all affected Tenant Households with a copy of the Building Official's determination. This decision shall be final.

B. All hearings conducted before the Housing Advisory Commission shall be scheduled for the next available meeting unless a postponement is agreed upon by all parties. The Commission may convene a special meeting if delay of a hearing until the next regularly scheduled meeting would create a hardship. The Owner and all affected Tenant Households shall be notified of the time and place of the hearing at least ten (10) days before the date of hearing. The Commission shall render its decision on any such appeal within ten (10) days after the hearing on the appeal is closed. The Commission's decision shall be final.

C. Nothing in this Chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative

remedies provided by this Chapter. However, it shall be conclusively presumed that a litigant has not exhausted his/her administrative remedies as to any issue which is not raised in the administrative proceedings authorized herein.

Section 13.84.110 Private right of action

Any Tenant that believes that the provisions of this Chapter have been violated shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the payment obligations established by this Chapter and for actual damages incurred by a Household as a result of the Owner's willful failure to offer the Relocated Household the opportunity to reoccupy the Unit from which it relocated. In any action brought under this Chapter, the court may award reasonable attorney fees to any prevailing party.

Section 13.84.120 Severability

If any provision of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Chapter shall not be invalidated.